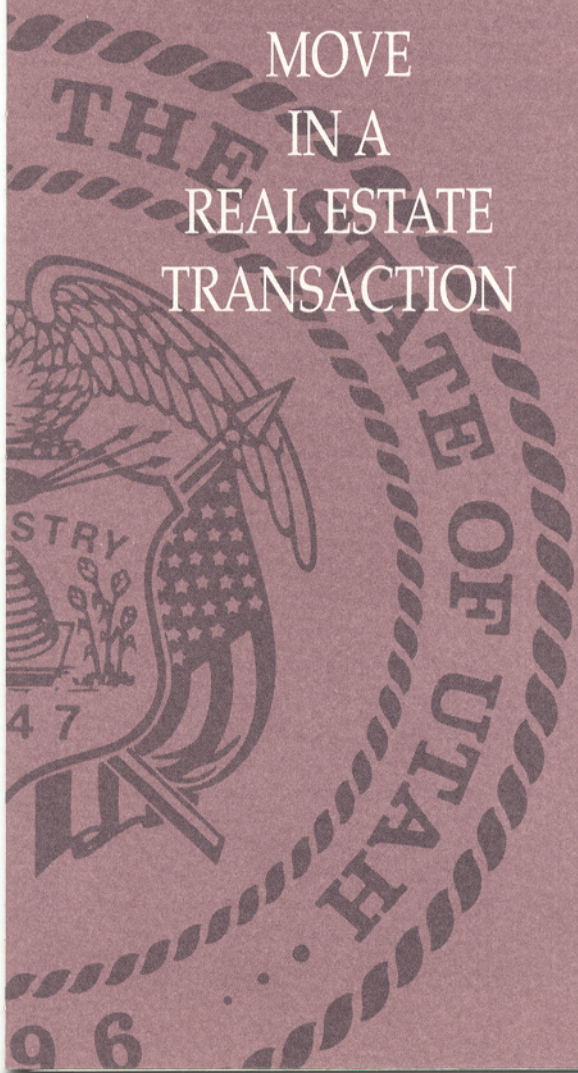


UTAH
DEPARTMENT OF COMMERCE

MAKING
THE RIGHT
MOVE
IN A
REAL ESTATE
TRANSACTION



John and Mary decided to buy a house, but they didn't know where to start. They were not sure what they could afford, in what area they wanted to live, how they would finance the purchase, what type of a dwelling they should consider buying or who they could trust to help them. John and Mary quickly came to realize that there were many factors to consider before they rushed headlong into a real estate purchase.

For the majority of Utahns, buying their own home or real property will be the biggest and most important investment they will make during their lifetime. For most, the purchase of real estate goes smoothly, but others can experience some significant problems.

There are many alternatives to consider when buying or selling real estate. Besides making the right financial decision, you want your decision to be one which will bring you complete satisfaction.

The Division of Real Estate in the Department of Commerce provides public protection in the real estate marketplace through the education and licensure of real estate brokers and salesagents, and enforcement of standards of conduct required of these professionals by law.

This brochure is designed to provide consumers with basic information to help you make wise real estate decisions.

Real Estate Agents

If you are buying or selling real estate, it is not mandatory that you contact a real estate agent. However, it takes a lot of time, work and attention to details to effectively handle a real estate transaction. Many consumers can find the process of buying or selling real estate confusing and overwhelming without the help of a qualified real estate agent.

If you pay someone to help you find a buyer for your real estate or find real estate to purchase, that person must have a Utah real estate license. In order to earn a Utah real estate license, applicants must meet certain standards. Each applicant must pass a state

licensing examination and provide evidence of integrity and competence. Applicants are now also required to attend continuing education courses each year to stay abreast of happenings in their industry.

Agent Designation

In choosing a real estate agent it can be helpful to understand their different designations:

A *principal broker* is the “boss” of the real estate brokerage, whose job it is to bring parties together in a real estate transaction. By custom in Utah, the principal broker usually collects a fee from the seller of the real estate, however, sometimes the buyer pays the commission.

The *real estate salesagent* performs many of the same duties as a broker. However, they cannot do so under their own authority — they must act as a representative of the principal broker with whom they are affiliated. The principal broker is ultimately responsible for what the agent does. The terms *REALTOR®* or *REALTOR-ASSOCIATE®* are not synonymous with broker or agent but identify a real estate licensee who is a member of the NATIONAL ASSOCIATION OF REALTORS® and bound by its code of ethics. In some areas, the Board of REALTORS® operates a Multiple Listing Service for its members.

Agent Representation

All real estate agents are required by law to disclose to parties – in writing – whom they represent in a real estate transaction. If you are the buyer you may believe — as many consumers do — that the agent legally represents you. However, real estate agents may represent the buyer, the seller, or both.

Agency

If you are a seller and sign a “listing agreement” or an “agency agreement” with a brokerage, then the principal broker and all of the salesagents affiliated with that brokerage are representing you in trying to find a buyer. The listing agreement or agency agreement generally contains a provision in which you agree to pay a commission for this representation. The brokerage has a duty to act in your best interest. You will be their “client” and they must be loyal to you.

If you are a buyer, you may choose to hire a

brokerage to represent you and act in your best interest in finding you a property to purchase; however, you may have to agree to pay a commission for this representation. As an alternative, you may choose to be assisted by a brokerage which will represent the seller and be paid by the seller. In that case, you will be treated as a "customer," not as a client to whom special duties are owed. As a "customer," however, you must be treated honestly.

Commission

It is important to note that the rate of commission is not set by the state. The rate of commission is set by agreement between the real estate brokerage and the party paying the commission.

The Role of An Agent

Consumers should not expect real estate agents to do everything for them. Many consumers will expect agents to act as attorneys, structural engineers, surveyors, accountants and investment advisors. However, in most cases the agent cannot look at a transaction and tell you if it is 100 percent legally sound, tell you if the house is structurally sound, or even if it is free of termites.

There are some basic issues you can and should ask an agent to discuss with you:

- Is the agent licensed by the state? Agents should be carrying a pocket license card that they can show you when asked. Or you can call the Division of Real Estate at 530-6747 to verify their licensure.
- Who is the agent representing — the buyer or the seller?
- If you are buying a home, in what school district is it?
- Is the home close to shopping, churches and transportation routes?
- Is the real estate located in a city or an unincorporated area for services?
- What is the property tax, age of the home, square footage of the home, and zoning?
- Can I afford this home? Will I qualify for a mortgage?
- What will the payments be?

What Can You Do If Problems Arise With An Agent?

When you obtain the services of an agent, you are placing your trust and financial welfare in them. Most real estate agents practice their profession with utmost integrity. However, in some instances, consumers can have legitimate problems with agents.

If you have had a serious problem with a real estate agent concerning unethical or illegal behavior, you may file a complaint with the Division of Real Estate.

If an agent is a member of a local Board of REALTORS®, a complaint can also be made to that local board. Each board has a Professional Standards Committee to maintain the professionalism and ethical behavior of its members.

The Division of Real Estate licenses and enforces standards of conduct for more than 12,000 real estate licensees. The Division has the responsibility to ensure that the public is protected and receives competent, professional service from the people they license, and that unlicensed individuals don't engage in the unauthorized practice of the real estate profession.

After you file a complaint with the Division an investigator will investigate the complaint and the Division will determine if there is sufficient evidence to file a petition in the case. The petition details the Division's allegations of violations in the case.

The licensee is then required to file a written answer to the allegations. Licensees may choose to be represented by an attorney and, of course, have the opportunity to protect their rights before any action may be taken on their license.

The Division can take action when warranted concerning the professional's ability to continue practicing by suspending, revoking, placing on probation or denying issuance or reissuance of any real estate license or by imposing a fine.

Some cases are settled by a stipulated agreement where the Division and the licensee resolve the case without the need for a hearing. If a stipulated agreement is not reached, many cases will then go on to a hearing before the

Utah Real Estate Commission or an Administrative Law Judge. After the hearing, the Utah Real Estate Commission will issue a written order in concurrence with the Executive Director of the Department of Commerce.

The Division may also cooperate with the Attorney General's Office or various county attorney's offices to report alleged criminal activity by a licensee.

Real Estate Transaction Problems

Although most real estate transactions occur with little or no problems — there are some problem areas consumers need to watch for so they don't become unwilling victims.

• Rent Skimming

Fred and Ann desperately wanted to buy a home. However, they were not able to purchase a home until they sold their condominium. Because of the market conditions at the time, Fred and Ann found themselves owing more on their condominium than the property was worth.

Along came George who offered to buy the property to use as a rental. He promised to do a "simple assumption" of the mortgage on Fred and Ann's condominium. Fred and Ann deeded the condo to George and gave him their payment book — but Fred and Ann were unknowingly still obligated on the loan if there were any problems.

George rented the condominium to another party for nine months at \$500 dollars a month, but didn't make one mortgage payment. After nine months, the bank foreclosed on the loan and George left town.

After George left, Fred and Ann quickly found out that they owed a lot of money on a condominium that they thought they had sold.

George is what is commonly called a "rent skimmer." There are professional rent skimmers who travel the country taking advantage of people who simply want to sell their properties. They collect a lot of rent and leave the original owners owing a lot of money. Many people have gone bankrupt as a result of falling victim to a rent skimmer.

Many rent skimming schemes are transacted when parties enter into a simple assumption. In a simple assumption the original buyer is still obligated on the loan although the property has

been sold. Unless the original buyer applies to the lender and requests a release of liability from the lender, he is still obligated on the loan.

It is a good idea for you to check out the financial stability of buyers before you enter into simple assumptions with them. If not, the feeling of "finally free" might turn into the reality of "deep in debt."

•Due on Sale Clauses

David and Paula wanted to buy a house but didn't have a lot of cash to pay for the loan application and origination fees, mortgage insurance, and other costs. They had heard that it was possible to save some of those fees by buying "on contract" and had seen an ad in the newspaper in which a seller was offering his house for \$500 down on a contract sale.

David and Paula gave the seller \$500 and signed a 30-year installment contract, agreeing to make monthly payments to the seller. The seller used part of their monthly payment to pay the existing monthly payment on the house's mortgage and kept the rest of their payment toward his equity.

Unknown to David and Paula, there was a "due on sale" clause in the mortgage on the house. This meant that the lender of the original mortgage had the option of calling the balance due if (or when) the property was resold. Several months after the sale, the lender found out that David and Paula had bought the house, and notified the seller that his loan was being called due. The seller had to pay the entire balance owed on the mortgage. The seller was unable to pay off the loan or find a bank who would lend him money to pay off the loan. The house was foreclosed. David and Paula were then out on the street and had lost their \$500 down payment and the monthly payments they had made. The seller also lost the investment he had in the house.

There is absolutely nothing wrong with buying a property using a Uniform Real Estate Contract. The problem comes when there are certain clauses in a loan against the property.

Mortgages or notes often contain clauses by which the lender may call the entire loan balance due if the property is sold without the lender's permission. A "due on sale clause" is placed in the mortgage to protect the lender. Sometimes a mortgage or a note may be assumed by a new buyer, but there are often conditions which must be satisfied before the loan

may be assumed. In some cases, a minimum length of time must pass after the loan was taken out (for example, one year or two years) before the property may be sold and the loan taken over by a new buyer. In other instances, the new buyer's credit must be approved by the lender before he may take over the loan. The lender may also have the ability to raise the interest rate on the loan.

If a new loan is being taken out by the buyer to pay off all existing obligations against a property, then such clauses in the old loan do not matter to either buyer or seller. But where the existing loan will not be paid off at the time of purchase, it is critical to determine whether there are provisions in the loans relating to the sale of the property or assumption of the loan.

If you are the seller, look for these type of clauses in the mortgage or trust deed note which you signed. If you can't tell whether such conditions are present, contact the lender or an attorney.

If you are the buyer, you should ask whether the mortgage or trust deed note contains any such clauses before you purchase a property "on contract" or agree to assume or take over the payments on an existing loan.

Places to Contact for Help

UTAH DIVISION OF REAL ESTATE

160 EAST 300 SOUTH

PO BOX 146711

SALT LAKE CITY UT 84114-6711

(801) 530-6747

The material in this brochure is intended to help you, the consumer, make wise decisions regarding real estate transactions. If you have specific needs or questions that fall outside of the state's ability to help you, it is advised that you contact a licensed real estate agent, attorney, appraiser, or title insurance company.